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File No. O. Prov. Fund /47

Legal **DEPARTMENT**

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Subject:— Opinions under the Provident Funds Act 1925

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C O N T E N T S.

Legal Department File No.O.I Prov. Funds /1947.

Sr.No.	Compilation No.	Subject.	Pages.
		Opinions under the Provident Funds Act, 1925.	
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2.	O.No.2532/14.3.47	Sec.4 (1), rule 30(1)(a) Question whether when nomination is made in favour of wife, production of succession certificate is necessary	3-4
3.	O.No.5473/27.47	Question whether there is any objection to relaxing rule 31(2) in the case of Laxmibai.	5-6
4.	O.No.5943/6.6.47	Questions (1) whether the view taken by the A.G. that the amount standing to the credit of the deceased subscriber in the Provident Fund should be paid to his nominee and (2) whether if the will is duly proved the A.G. may pay 1/3rd of the accumulations to the legatee and the balance to he heirs as provided in rule 14(1)(b) of the Defence Savings and Provident Fund Rules	7-8
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The funeral comprises washing, shrouding and interring of the dead body together with the ceremonies connected therewith including the 'chihlum' (funeral service performed on the fortieth day after the deceased). Besides, disbursements connected with the actual funeral, all legitimate death-bed charges such as fees for doctors attending the deceased, cost of medicine etc. come in this category of funeral charges. (See p.38 of Ameer Ali's Mohammedan Law). The erection of a tomb by a Mahommedan may be considered a pious duty to the deceased, but does not appear to be obligatory under the Mahomedan law. Consequently the expenditure incurred for erecting the tomb in the present case would not fall within the ambit of sub-clause (iii) of clause (a) of sub-rule (1) of rule 14 of the Bombay Provident Fund Rules 1936.

Sd/ -
Registrar of Legal Affairs.

U.O. to P. & S.D. No.1178, dated the 5th February 1947.

L.P.W.I.No.2200dt.25.2.47

Submitted:

Please see Accountant General's letter etc. ante and P. & S.D. note p.3 ante. The facts are these:- Mr. Pinto, a subscriber to G.P. Fund was dismissed from service on 5.1.1944 and payment of the G.P. Fund was held up as a suit was pending against him. The orders for holding up payment were however cancelled on 17.5.46 but the subscriber having died on 18.5.1946 payment could not be made to him. His wife Mrs. Pinto who has been appointed a nominee under Rule 30(1)(a) has now, it appears applied for payment; but under advice from the Solicitor in L.D., the Comm. of Police appears to have asked her to produce a succession certificate. The Accountant General and P. & S.D. consider that the advice given by the Solicitor in L.D. is not correct and hence the matter has been referred to P.L.A. for advice.

It is true that, on his dismissal, Mr. Pinto became entitled to receive the Provident Fund standing to his credit but as payment could not be made to him, the amount of the fund after his death would become payable to his nominee. This is clear from the provisions of Rule 30(1)(a) of the Bombay General Provident Fund Rules. Under that Rule on the death of the subscriber, the amount becomes payable to the nominee (cf. P.L.A.'s No.2785 dt. 12.4.1946 and 5905, dt. 22.8.46). It is hence, not necessary for the nominee to produce a succession certificate to show his title to the amount. The view taken by the A.G. and the P. & S.D. appears correct.

The opinion ascribed to the Solicitor in L.D.

appears to have been given orally and it appears that the fact x of a valid nomination in favour of wife was not brought to this notice.

Id./-5.3.

A.S. I agree. Reply may be -

Since the subscriber, Mr. Pinto, has made nomination in favour of his wife, under rule 30(1)(a) of G.P. Fund Rules, 1936, the amount standing to his credit in the General Provident Fund became payable to his nominee, who survives him (cf. clause (a) of sub-section (1) of section 4 of the Provident Funds Act, 1925) and consequently production of succession Certificate is not necessary.

Id./- G.E. 6.3.

A.L.R.

I agree. Reply may be -

"Seen and returned.

The view taken by P. & S. D. is correct.

Id./-RTK 8.3.

R.L.A. Id./-R 1.3.

U.R. to P. & S.D. No.2532 dt. 14.3.47.

Office of the R.L.A.

The Manager of the estate of a lunatic can give a valid discharge (see section 75(1) of the Indian Lunacy Act, 1912). It is for this reason that a provision has been made in rule 31(2) of the Bombay General Provident Fund Rules, 1936 permitting payment of the amount standing to the credit of a lunatic subscriber to the person appointed as Manager of his estate under the Indian Lunacy Act. Consequently rule 31(2) cannot be interpreted as allowing payment to the heir of a lunatic in cases where no manager of his estate has been appointed under the Indian Lunacy Act, since no such heir can give a valid discharge. Payment cannot be made to the nominee under rule 7, except in the event of the subscriber's death. If payment is to be made to Mrs. Laxmibai, wife of the lunatic in the present case even though she has not been appointed manager of the lunatic's estate under the Indian Lunacy Act, Rule 31(2) will have to be relaxed. The view taken by Under Secy. (P. & S.D.) is correct. The amount is very small, and Laxmibai is already being paid the pension under section 95(1) of the Indian Lunacy Act. There is no objection to relaxing Rule 31(2) in her favour.

Sd/R. 27.5.
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 5473 dated the 27th May 1947.

The view taken by A.G. that the amount standing to the credit of the deceased subscriber in the Provident Fund should be paid to his nominee is correct. (See section 5(1) of the Provident Funds Act, 1925). As regards the accumulations in the Defence Savings Provident Fund it appears that the Will of the deceased cannot be ignored. Rule 14(1)(b) of the Defence Savings Provident Fund Rules will apply only if there is no nomination. But a Mahomedan can dispose of by Will not more than one third of his estate and such Will may after due proof be admitted in evidence even though no probate has been obtained. (See Mulla's Mahomedan Law, Pages 116-120). This appears to be the only property of the deceased, and consequently if the Will is duly proved the Accountant General may pay one third of these accumulations to the legatee and the balance to the heirs, as provided in rule 14 (1) (b) of the Defence Savings Provident Fund Rules.

Sd/-R.6.6.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.5948, dated the 6th June 1947.

Office of the R.L.A.

Provident Funds Act, 1925 sections 8(2) and (3) -

It appears from the R.D. note at page 3 ante, that that Department is relying on an unadapted copy of the Provident Funds Act, 1925. That Act has been adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, and is printed at pages 161-166 of Vol. VIII of the Unrepealed Central Acts. Under sub-sections (2) and (3) of section 8 of the Act as so adapted the appropriate Government (as defined in sub-section (4) of the section) is required to publish notifications issued thereunder in the Official Gazette and not in the Gazette of India. The Official Gazette is the Gazette of India or, as the case may be, the official Gazette of a Province (cf. section 3(37a) of the General Clauses Act, 1897). Since the appropriate Government in the present case is the Provincial Government the Gazette in which the proposed notifications should be published is the Bombay Government Gazette.

Sd/-
for Remembrancer of Legal Affairs.

U.R. to R.D. No.9952 dt. the 14th October ~~XXX~~ 1947.

Office of the R.L.A.

Nomination Provident Funds Act, 1925.

The State-Aided Provident Fund for teachers in non-Government Secondary Schools is added to the Schedule to the Provident Funds Act, 1925 (see G.R., E.D. No.933, dated 15th September 1939). Consequently, the provisions of that Act apply to that Fund. Under section 5(1) as amended by Act XI of 1946, notwithstanding anything contained in any law for the time being in force or in any disposition whether testamentary or otherwise by a subscriber to the Fund, the sum standing to his credit in the Fund, where any nomination duly made in accordance with the rules of the Fund etc. shall on the death of subscriber or depositor become entitled to the exclusion of all other persons to receive such sum or part thereof as the case may be. A nomination to be valid must be duly made in accordance with the Bombay Secondary Schools Teachers Provident Fund Rules accompanying the G.R. (E.D.) No.933, dated the 15th September 1939. Clause (i) of rule 5(d) of those Rules provides that every teacher shall on joining the Fund sign a certificate in token of acceptance of these rules in Form 'A'. Clause (ii) states that a teacher who at the time of joining the Fund has a family shall send to the Controlling Officer a nomination in Form 'B' in favour of one or more members of his family only. Under sub-rule (d) of rule 2, a family means in the case of a female teacher, the husband and

children of the teacher and the widow or widows of children of a deceased son of the teacher. In the present case Mrs. Lele's husband is alive. Consequently, Mrs. Lele can appoint her husband only as her nominee. The nomination made by her in favour of her nephew, not being in accordance with the Rules, is invalid and the nominee would not be entitled to the rights under the Provident Funds Act, 1925. If she does not want to submit a valid nomination, she should be deemed to have made no nomination under the rules. It is true that this is a hard case and it would be fair to extend the definition of family in rule 2(d) to meet such cases. But unless and until that rule is amended, Mrs. Lele's nomination of her nephew will have to be treated as invalid and no exception can be made. If Mrs. Lele has no desire to nominate her husband, it would be open to her to make a will in favour of her nephew instead of taking the risk of making an invalid nomination in his favour.

Sd/- [illegible] 30.9.
Remembrancer of Legal Affairs.

U.R. to Education and Industries Department, No.9658 dt.1st Oct. 1947

Mr.

Office of the R.[illegible]

Recovery or misappropriated money from Provident Fund deposit.

The view taken by the Education and Industries Department is correct. Provident Fund deposit, so long as it remains in the hands of Government cannot be attached but once it is paid out it loses the character of compulsory deposit and it may be attached in the hands of the party to whom it has been paid (cf. Mullan's C.P.C. at pages 246-247). There is, therefore, no objection to the Backward Class officer filing a suit and arranging for execution of the decree at the time when payment of the deposit to the judgment debtor will be made.'

Sd/- R.
3.11.
Remembrancer of Legal Affairs.

U.R. to E. and I. Department, No. 10554, dated the 4th November 1947.

Appropriation of Provident fund deposits. Provident Funds Act, 1925.

It appears from rule 24 of the Provident Fund Rules made by the District Local Board, Broach and printed as an accompaniment to Government Resolution No.3. 128(20), dated the 14th May 1943 that the Provident Funds Act, 1925, has been made applicable to the established Provident Fund by the District Local Board, Broach for its employees. The disposal of the accumulations standing to the credit of a subscriber to that fund will accordingly be governed by the provisions of section 4(1) of the Provident Funds Act, 1925. Under that section the District Local Board will be bound to make payments of the amount of the Provident Fund to the subscriber, his nominee if the subscriber is dead, and in the absence of a nominee, to any person who produces probate, letters of administration or succession certificate. The Local Board will, therefore, be bound to hold such accumulations as a Trustee until they are properly made over to the person entitled to claim the same under section 4(1) of the Act. If there is no person to claim them, they would in view of the provisions of section 174 of the Government of India Act, 1935 accrue to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner and shall vest in His Majesty for the purposes of the Government of the Province. No rule can, therefore, be made directing that the balance of the provident fund standing to the credit of a subscriber shall from part of "assigned profits" after a certain

period. The proposed rule is, therefore, ultra vires and of no effect.

Sd/- R/-
Remembrancer of Legal Affairs.

U.R. to Health and Local Government Department No.11160 dated the 21st November 1947.